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The Honorable John D. Dingell
Chairman, Subcommittee on Oversight
and Investigations
~~Committee on Energy and Commerce~~
House of Representatives

~~Dear Mr. Chairman~~

This is in response to your request for an opinion regarding the validity of a recent Department of Energy (Energy) contention that Energy, with the concurrence of the Office of Management and Budget (OMB), can use fiscal year (FY) 1981 appropriations to make severance payments extending into FY 1982 to employees of the Office of Hearings and Appeals, among others, who would be involved in a reduction-in-force (RIF) expected to be implemented in FY 1981.

Fiscal year 1981 appropriations for the OHA are set forth in Pub. L. No. 96-514, 94 Stat. 2957, "Department of the Interior and related agencies Appropriations, fiscal year 1981." This is a lump sum appropriation "[f]or necessary expenses in carrying out the activities of * * * the Office of Hearings and Appeals, * * *" and is used, among other purposes, for payments of salaries and expenses incurred during that fiscal year. Any costs associated with a RIF would, in our opinion, also be a "necessary expense" of OHA to be funded from OHA appropriations.

If a RIF is instituted, eligible employees who are involuntarily separated are "entitled to be paid severance pay in regular pay periods by the agency from which separated." 5 U.S.C. § 5595(b). The amount and duration of these payments is calculated according to the formula set forth in 5 U.S.C. § 5595(c). The entitlement ceases if the employee is rehired by the Federal Government. 5 U.S.C. § 5595(d).

On the question of which fiscal year's funds should be charged for severance payments which are made during successive fiscal years, section 25.1 of OMB Circular A-34, "Instructions for Budget Execution" states in pertinent part:

"A. PERSONAL SERVICES AND BENEFITS

Obligations incurred

"* * * Severance pay will be reported as an obligation of the pay period covered, on a pay period by pay period basis.* * *"

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Therefore, on the basis of this instruction, severance payments made for pay periods during FY 1981 would be obligated from FY 1981 appropriations, as each payment is made. Payments extending into FY 1982 would obviously have to be obligated from OHA's FY 1982 appropriations as these expenses would be "properly incurred during that year," pursuant to 31 U.S.C. § 712a, which states in pertinent part:

"Except as otherwise provided by law, all balances of appropriations contained in the annual appropriation bills and made specifically for the service of any fiscal year shall only be applied to the payment of expenses properly incurred during that year * * *"

We are aware of no statutory exception to 31 U.S.C. § 712a under which Energy can apply balances of FY 1981 appropriations to the payment of severance expenses properly incurred in FY 1982, with or without the concurrence of OMB.

The only time the question of the obligation of appropriations for severance payments has been formally considered here, the then Bureau of the Budget had not yet issued instructions on the matter. In response to a question similar to that at issue here, we recognized the complexities and ambiguities inherent in the severance pay statute and stated:

"* * * Because of the unique character of obligations arising out of the statutory requirement for severance pay, we hesitate to lay down a rule at this time which would, in effect, require that funds be budgeted in a specific manner at the expense, perhaps, of generating inherent inefficiencies in the budget and accounting process. Rather, we believe it would be more appropriate for this Office to await resolution of the matter by the Bureau of the Budget and to be guided by such action which the Congress may take with regard to the budget procedures ultimately developed." 45 Comp. Gen. 584, 586 (1966).

We see nothing wrong with the guidance provided in the resolution ultimately reached by the Budget office--now set forth in the OMB instruction quoted above--and affected agencies have been following the rule consistently for 15 years. In

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addition, the Congress has been appropriating funds for salaries and expenses presumably on the basis of and with knowledge of the instruction.

On the basis of the preceding discussion, it is our view that Energy cannot use FY 1981 appropriations to make severance payments extending into FY 1982 without the express authority of the Congress.

Sincerely yours,

Milton J. Fowler
Acting Comptroller General
of the United States